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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-364

SOMYOS LOHAPIBOON
9848 Tabor Street, #223
Los Angeles, California 90034

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about December 16, 2005, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Somyos Lohapiboon (Respondent). On or about December 13, 2005, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 30, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732, subdivision (b) of the Code states:

8 "The board may deny an application, or may order the issuance of a license
9 with terms and conditions, for any of the causes specified in this chapter for
10 suspension or revocation of a license, including, but not limited to, those causes
11 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

12 7. Section 3750 of the Code states:

13 "The board may order the denial, suspension or revocation of, or the
14 imposition of probationary conditions upon, a license issued under this chapter, for
15 any of the following causes:

16 " . . .

17 "(g) Conviction of a violation of any of the provisions of this chapter or of
18 any provision of Division 2 (commencing with Section 500), or violating, or
19 attempting to violate, directly or indirectly, or assisting in or abetting the violation of,
20 or conspiring to violate any provision or term of this chapter or of any provision of
21 Division 2 (commencing with Section 500). . . ."

22 8. Section 3750.5 of the Code states:

23 "In addition to any other grounds specified in this chapter, the board may
24 deny, suspend, or revoke the license of any applicant or license holder who has done
25 any of the following:

26 "(a) Obtained or possessed in violation of law, or except as directed by a
27 licensed physician and surgeon, dentist, or podiatrist administered to himself or
28 herself, or furnished or administered to another, any controlled substances as defined

1 in Division 10 (commencing with Section 11000) of the Health and Safety Code. . .
2 .”

3 9. Section 492 of the Code states:

4 “Notwithstanding any other provision of law, successful completion of any
5 diversion program under the Penal Code, or successful completion of an alcohol and
6 drug problem assessment program under Article 5 (commencing with section
7 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
8 agency established under Division 2 ([Healing Arts] commencing with Section 500)
9 of this code, or any initiative act referred to in that division, from taking disciplinary
10 action against a licensee or from denying a license for professional misconduct,
11 notwithstanding that evidence of that misconduct may be recorded in a record
12 pertaining to an arrest.”

13 COST RECOVERY

14 10. Section 3753.5, subdivision (a) of the Code states:

15 “In any order issued in resolution of a disciplinary proceeding before the
16 board, the board or the administrative law judge may direct any practitioner or
17 applicant found to have committed a violation or violations of law to pay to the
18 board a sum not to exceed the costs of the investigation and prosecution of the case.”

19 11. Section 3753.7 of the Code states:

20 “For purposes of the Respiratory Care Practice Act, costs of prosecution
21 shall include attorney general or other prosecuting attorney fees, expert witness fees,
22 and other administrative, filing, and service fees.”

23 12. Section 3753.1, subdivision (a) of the Code states:

24 “An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the
26 monetary costs associated with monitoring the probation.”

27 CONTROLLED SUBSTANCES

28

1 13. Methamphetamine is a Schedule II controlled substance pursuant to
2 Health and Safety Code Section 11055. Gamma hydroxybutyrate (GHB) is a Schedule I
3 controlled substance pursuant to Health and Safety Code Section 11054.

4 CAUSE FOR DENIAL OF APPLICATION

5 (Possession of a Controlled Substance)

6 14. Respondent's application is subject to denial under Code sections
7 3750, subdivision (g) and 3750.5, subdivision (a), in conjunction with section 3732,
8 subdivision (b), in that he possessed the controlled substances, methamphetamine and GHB.
9 The circumstances are as follows:

10 A. On or about June 25, 2004, narcotics investigators from the Orange
11 County Sheriff's Department made an investigative traffic stop on the vehicle
12 respondent was driving. The passenger in respondent's vehicle had been under
13 surveillance by the deputies. One of the deputies searched a black bag and found
14 therein two baggies containing suspected methamphetamine, 2 glass pipes and 2
15 plastic straws commonly used to inhale illegal drugs. The deputy also found a bottle
16 inside the trunk of the vehicle which contained a clear viscous liquid indicative of
17 GHB, a central nervous system depressant. Respondent admitted the black bag
18 belonged to him, and that the baggies contained methamphetamine which he was
19 going to smoke in the glass pipes. He also said the bottle found in the trunk of the
20 vehicle contained GHB. Respondent acknowledged that he did not have a
21 California driver's license.

22 B. On July 27, 2004, a felony complaint was filed against respondent in
23 a criminal proceeding entitled *People v. Somyos Lohapiboon*, in Superior Court,
24 Orange County, Case Number 04NF2711, charging him with two counts of
25 possession of the controlled substance, methamphetamine, a violation of Health and
26 Safety Code section 11377(a), a felony (counts 1 and 2); driving a vehicle without a
27 valid license, a violation of Vehicle Code section 12500(a), a misdemeanor (count
28 3); and failure to attach a license plate to a vehicle, a violation of Vehicle Code

1 section 5200(a), an infraction (count 4).

2 C. On September 29, 2004, respondent pled guilty to two counts of
3 possession of the controlled substance, methamphetamine (counts 1 and 2). The
4 court granted deferred entry of judgment and respondent was placed on diversion
5 pursuant to Penal Code section 1000. He was ordered to enroll in a drug program
6 and pay a diversion fee of \$150.00. Counts 3 and 4 of the complaint were
7 dismissed.

8
9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters
11 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

12 1. Denying the application of Somyos Lohapiboon for a Respiratory
13 Care Practitioner License;

14 2. Directing Somyos Lohapiboon to pay the Respiratory Care Board of
15 California the costs of the investigation and enforcement of this case, and if placed on
16 probation, the costs of probation monitoring;

17 3. Taking such other and further action as deemed necessary and
18 proper.

19 DATED: July 17, 2006

20
21
22 Original signed by Liane Zimmerman for:
23 STEPHANIE NUNEZ
24 Executive Officer
25 Respiratory Care Board of California
26 Department of Consumer Affairs
27 State of California
28 Complainant